IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 153 OF 2001

Communidade of Mapusa,
Bardez, Goa, through
Attorney Shri Vincent
Joseph Braganza,
Commended House, Mapusa,
Bardez, Goa. ... Appellant

versus

1. Deputy Collector(Rev) and
Land Acquisition Officer,
Collectorate, North Goa,
Panaji.

2. Mapusa Municipal Council,
Mapusa, Bardez, Goa. ... Respondents

Mr. M. S. Joshi, Advocate for the Appellant.

Mr. A. N. S. Nadkarni, Advocate General with Mr. P.A. Kamat, Additional Government Advocate for Respondent No.1.

Mr. S. D. Padiyar, Advocate for Respondent for Respondent No.2.

CORAM : P. V. HARDAS &
N. A. BRITTO, JJ.

DATE : 25TH AUGUST,2004.

ORAL JUDGMENT(PER P.V.HARDAS, J.)

The Appellant being aggrieved by the Award dated 16th October, 2000, passed by the District Judge, Panaji, in Land Acquisition Case No.60/93 dismissing the reference under Section 18 of the Land Acquisition Act,

has filed the present Appeal assailing the said Judgment and Award.

2. The facts in brief as are necessary for the decision of this Appeal can be briefly stated as under:-

The Government issud a Notification under Section 4 of the Land Acquisition Act which was published in the Official Gazette on 17th January, 1985, acquiring 1990 sq. metres of land bearing Chalta No.3 of P.T. Sheet No.96 situated in City Survey at Mapusa belonging to the Appellant, for the purpose of construction of Municipal Staff Quarters at Dattawadi, Mapusa. The Land Acquisition Officer had awarded Rs.60/- per sq. metre as compensation for the acquisition of the said land. The Applicant being dissatisfied had sought for a reference claiming compensation at the rate of Rs.800/- per sq. metre.

3. The Reference Court framed an issue whether the Appellant proved that the market price of the area acquired from his property on the date of publication of Notification under Section 4 was Rs.800/- per sq. metre?

4. In support of his claim, the Appellant examined its Attorney Vincent Braganza as A.W.1. The

substratum evidence of A.W.1, Vincent Braganza, is that in 1984, an auction had been held in respect of certain land which was near to the acquired land and the land was sold at the rate of Rs.300/- per sq. metre in the auction. He has produced at Exh.32 the Book of Minutes, which according to him evidences the auction. Perusal of Exh.32 would show that the Minutes of the General Body Meeting were recorded which had stated that the land be offered to one Jerry Braganza at the rate of Rs.300/- per sq. metre. No further documents have been filed by the Appellant to evidence either the sale of the land at Rs.300/- per sq. metre or the fact that the land was sold by public auction. No documents have been produced to substantiate the claim of the Appellant that the land was sold at Rs.300/- per sq. metre.

5. In the cross-examination of A.W.1, Vincent Braganza, it has been brought on record that a Hindu Crematorium is near the acquired property. He has also admitted that the Housing Board had sold developed plots in the Housing Board Colony at the rate of Rs.60/- per sq. metre and the sales were effected in the year 1984-85. He has further admitted that in the Housing Board Colony the facilities such as roads, electricity and all other infrastructural facilities were available. He has further admitted that the plot of the Housing

Board Colony was at a distance of about 600 to 800 metres from the acquired property.

6. Respondent No.2 i.e. the Mapusa Municipal Council in whose favour the land was acquired had examined four witnesses. R.W.3, Shyamji Kataria had produced on record a copy of the Sale Deed of land admeasuring 1380 sq. metres which was sold on 24th January, 1985. In the cross-examination on behalf of the Appellant he has admitted that the acquired property is at a distance of about half a km. from the property which was purchased by him. The Sale Deed which is at Exh.40 shows that a house admeasuring 350 sq. metres was also purchased by him along with the land.

7. The Reference Court according to us has rightly taken into consideration the fact that the plots of the Housing Board which were situated at a distance of 1 km. from the acquired land were sold at Rs.60/- per sq. metre in 1986 and they were having all facilities and consequently has approved of the compensation which was paid by the Land Acquisition Officer to the Appellant at the rate of Rs.60/- per sq. metre. The Reference Court has further taken into consideration that for the land which was acquired for the construction of P.W.D. quarters, the compensation at the rate of Rs.60/- per sq. metre was paid. The

land on which the P.W.D. quarters are constructed is in front of the acquired land with a road inbetween.

8. Mr. M. S. Joshi, learned Counsel on behalf of the Appellant has urged before us that assuming that the Appellant has not been able to establish that by a public auction the land of the Appellant was sold at the rate of Rs.300/- per sq. metre vide Exh.32, the evidence of R.W.3, Shyamji Murji, would clearly establish that the prevalent market rate in respect of similar property was about Rs.85/- per sq. metre. Mr. Joshi, learned Counsel has, therefore, placed strong reliance at the sale instance at Exh.40. The Sale Deed Exh.40 was executed on 24th January, 1985 i.e. slightly after the issuance of Notification under Section 4.

9. Apart from that, the Sale Deed is in respect of the plot of land as well as a house which was constructed thereon. The said house constructed was a pucca construction with walls made of stones. Th said house was admeasuring 350 sq. metres. Therefore, the rate of Rs.85/- per sq. metre which was paid by R.W.3, Shyamji Murji, was not in respect of the land only but was in respect of the land and the building. Therefore, according to us, the sale instance at Exh.40 cannot be applied for determining the market value of the acquired land. Apart from this, the Appellant had miserably

failed to establish and lead evidence that the market value of the land was Rs.800/- per sq. metre.

10. According to us, the Reference Court has rightly come to the conclusion and dismissed the reference.

11. After giving our anxious consideration to the rival submissions advanced before us, we see no reason to interfere in the Judgment and Award passed by the Reference Court and consequently the First Appeal, being devoid of any substance is accordingly dismissed with no order as to costs.

P. V. HARDAS, J.

N. A. BRITTO, J.

RD.